EPITOME
OF CERTAINE
LATE ASPERSIONS
CAST AT CIVILIANS, THE CIVIL AND ECCLESIASTICAL LAWES, THE COVRTS CHRISTIAN; AND AT BISHOPS AND THEIR CHANCELLORS.

WHEREIN

THE AVTHORS THEREOF

ARE REFVTED, AND REFELLED.

WITH

An Appendix, wherein the Ciuill *and* Canon Lawes, with the causes of the Cognisance or Cognition of either of them in the Church or Commons-wealth in the Kings Dominions, (what they are,) are opened.

BY

WILLIAM CLERK, Bach. of the Ciuill Law.

CIC. lib. 2. Tusc.

Et refellere sine pertinacia, & refelli sine iracundia, parati summus.

The aspersions follow in the next fol.

OPVSCVLI DICATIO

STVDIOSIS IVRISPRVDENTIÆ CANDIDATIS, CVPIDÆQVE LEGVM IVVENTVTI, HANC OPELLAM QVANTVLACVNQVE SIT,



GVILIELMVS CLERKE DICAT CONSECRATQVE.

THE ASPERSIONS.

1. THat the Ciuilians themselues confesse, that the Ciuill law is a Sea full of waues.
2. That euery Doctors opinion (in that learning) is a good authority.
3. That the like may be said of the Canon law, albeit the text thereof be scarce 400 yeares old.
4. That for the space of 300 yeares after Christ, the distinction of Ecclesiasticall and Spirituall causes, from Ciuill and Temporall, in point of Iurisdiction, was not knowen, nor heard of in the Christian world.
5. That the Clergy, by their Iurisdiction which they had from Cæsar, got wealth, which begot pride, which begot their ingratitude to Princes, which blotted Cæsars name out of the stile of their Courts, and called them Courts Christian.
6. That Bishops Chancellors (are of late) but vpstarts in the world.
7. That the sloth of Bishops hath brought them in.

GEntle and Iudicious Reader, if the wisdome of a *King* and his *Parliament* in England, where the *Ciuil* and *Canon* lawes, Bishops, & their Iurisdictions were in discussion, thought it not fit the wisdome of the *King* alone, nor with one, nor two, nor tenne (with him) of the wisests of the two houses *vpper* and nether of his *Parliament*, nor vnder two sixteens with the *King*, 32 in the totall, the one of Tẽporalitie, the other of the Clergie, should looke into these lawes, to what intent, I leave the Reader to the Act it selfe, Intituled an Act of the *Submissiõ of the Clergy to the King* &c. Then weigh his wisdome, & his wisdome, the two wisdomes of our two Authors, who (alone) haue looked into these lawes, & discerned of

them

them, & adiudged them, & their professors; The Bishops their Courts & their Chancellors with thē, who doe execute the same; The *theses* or *positions* named & numbred in the page ensewing next the title page, of this *Epitome*, had they infected but some fewe affected to the studie of this learning, & discouraged them therein, it had beene too much: But they take impression in some of our Bishops in some of the Kings dominions (I except England) of whō some wil haue no vicars generalls, but doe sit (without them) in their *Consistories*, where, by that occasion, whilst they determine thinking they determine (well) the causes brought before thē, they determine (ill) many times therein; whose owners thereby, somtimes the widow, sometimes the Orphan, somtimes both, do suffer amongst others:

And no maruell why. For though *Persons, things,* and *Actions,* all that lawes doe handle, or can handle in the generall, are but 3, for whatsoever law we vse, consists in one of these 3, *Persons, things,* or *actions*; yet there is in each of these so many points of learning in the law, that without the reading or practice thereof, or both, can no man Iudge aright; Iudge he may, and Iudge aright, as he that shootes & hits a marke he sees not, so the blinde man hits the Crowe, as the *prouerbe* is; a fearefull adventure in Iudgment, will a man adventure a *riuer* he knowes not, and knowes there is a danger in it, but knowes not where abouts, without a guide? *A* wise man will not, some ventrous doe, but die, or live, as they hit, or misse the danger; dayly experience teacheth this in

waters.

waters, more frequent in Iudgments, wherein the wisdome of the law, hath set a guide, to guide him in Iudgment, in matters of Iudgment of the *Church*, in whō it inuests the same in his person, place, or dignity; and hath not the law, nor the practice of it, to Iudge accordingly, by his profession, as our *Reuerend Fathers* the Bishops meere divines, haue not; And therefore haue, or ought to haue their *Vicars generalls* to guide them in Iudgmēt, or guide the Iudgment without them, otherwise, if they iudge amisse, or proceede amisse, in Iudgment, and so destroy it, though otherwise iust, as many times they doe, as dayly experience shewes it in our Courtes of Appeales and Quarrells in *Ireland*, they are inexcusable before GOD, and man.

That Appeales are made, and

doe

doe lie aswell frō the learned and experienced Iudge, be he never so circumspect in Iudgment, it is evident likewise; But not the difference, (*Iudicious Reader*) these appellations doe proceede from the perversnes of the Appellant, not the vnskilfulnes of the Iudge, as the other doe: Their causes are remissible to the Iudge againe, frō whō they came, & are sent vnto him back againe, regularly; The other are not so, but determinable, & determined by the Iudge of Appeale, finally; had the wisdomes of our authors of these positions attended the wisdome of the *King* & his *Parliament* in the act aboue mentioned, expressed, (the act, stands still in force) before they had divulged thē, I will not say what they had done therein, better, or worse; but better, or worse; they haue done; and

I haue said

THAT THE CIVILIANS THEMSELVES confesse, that the Civill Law *is a Sea full of waues.*

THE Author fell into this dispraise of this learning, from the praise of his owne, in these wordes, viz. And therefore we may say for the honour of our Law, (notwithstanding that vulgar imputation of incertainety) that the ludgement and reasons of it is more certaine, then of any other humane Law in the world, aswell because the grounds of our Common Law, haue from the beginning beene layed with such deepe wisdome, policy and providence, as that they doe provide for,

In the Preface to the printed Report of the causes & matters in law resolved and adjudged in the Kings Court in Ireland fol. 4. pag. 2. printed in Anno 1615.

and meete with almost all cases that can fall out in our Common-wealth. As also because these grounds are so plaine, and so cleare, as that the Professours of our Law, haue not thought it needfull to make so many glosses, & interpretations thereupon, as other Lawes are perplexed & confounded withall; which glosses, as one doth well obserue, doe increase doubts & ignorance in all Arts and Sciences: And therefore the *Ciuilians* themselues confesse, that their Law is a *Seafull* of waves, the text whereof being digested into so many volumes.

Impr.

Refut.

The Professors (saith our Author) of our learning (the Common Law he meanes) haue not thought it needfull to make so many glosses and interpretations thereupon, as other Lawes (the *Ciuill* & *Canon* Lawes he meanes) are perplexed & confounded withall: As if he had said, we glosse not, we interpret not, no, we are not *sicut cæteri hominum, Raptores, &c. velut etiam hic Publicanus*; The Author could not honour his owne learning, but dishonour ours, nor extoll that, but debase this. But to passe over that: Doe the *Ciuilians* themselves confesse, (doth any man thinke) their Law is

a *Sea full* of *waues*? believe it not judicious Reader, that it was a *Sea full* of waues (as it was) digested into 2000 bookes or very neare, before *Iustinians* time, all *Ciuilians* do confesse; but (since) reduced into 50 by *Iustinian*, as it was, which number (now) it exceedes not in bookes, but the same then, & now, in number & bookes, that Sea stood plaine, and stands plaine still; not a waue troubles it. To demõstrate this, let *Iustinian* begin, sayeth the *Emperour* when hee had accomplished the worke. *Et cum sacratissimas constitutiones, anteà confusas, in luculentam ereximus consonantiam, tunc nostram extendimus curam ad immensa veteris prudentiæ volumina, & opus desperatum, quasi per medium profundum euntes, cæleſti favore, jam adimpleuimus.* Hitherto the *Emperour* himself. And hereupon a famous learned *Ciuilians* Paraphrase is this. *Quis putas labor, quæ difficultas fuerit, non modò sacratissimas superiorum principum constitutiones, sed universas Romanæ sapientiæ sanctiones, & leges, antea, temporibus ipsis, confusas, ac dissolutas, in unam cogere, velut symphoniam, & æquabilitatem? Quicquid ab vrbe condita, & Romuleis temporibus vsque ad nostri Imperij tempora, (quæ fere in mille & quadringentos*

In proœm. de confirm. instit.

Claud. Cant. in tres lib prior instit. paraphr.

dinem deprimunt? vel à Regibus, vel à Senatu, vel à Reipub. moderatoribus tantum, edictum, sanctionem, vel à Prisciis Iure-consultis de jure rè-sponsum esse? quibus duo penè millia librorum esse conscripta, & plusquam tricies centena millia versuum effusa esse compertum est: (Hæc dicimus) adeò multa legere, perscrutari, expendere, & quod ex his optimum esset eligere, opus profectò immensum, & ab alijs non vanis ex causis desperatum; Ac nos, qui mentis nostræ conatus Reipub. nostræ commodis deservaramus, proprijs licet diffisi viribus, sed Dei omnipotentis auxilio freti, qui & rem penitus desperatus donare, & confirmare, suæ virtutis magnitudine potest, vastum illud profundumque pelagus ingressi sumus, & secundo flatu navigantes, superatis difficultatibus, portum quem petebamus, attigimus. Nam & priscorum principum constitutiones, quantumlibet vagas, sparsas, & confusas, ex densissimis tenebris, in sibi modis omnibus consentaneã formam, in vtrumque codicem retulimus, & immensa veteris Iurisprudentiæ volumina, quæ (quot diximus erant) in paucos aliquot velut tomos, nempe in quinquaginta libros pandectarum (sic enim ex ipsa re appellare licuit) Dei opt max. favore suffulti, magna cura, collegimus.

To come neare (a little) to this aspersion that

that comes so neare the *Ciuill* law, let the iudicious Reader, the Common lawyer especially, & more especially those of them, &c. what others that looke into our bookes, looke into our *Code*, and see and reade the three Constitutions there, that the *Emperour Iustinian* sets before his entrance into that booke, the 1 booke of his *Code* (by way as it were) of a *Proem*, preface, or introduction thereunto: 1: *de nouo Codice faciendo*, 2: *de Iustiniano Cod. confirmando*: 3 *de emendatione codicis Iustiniani, & secunda eius editione*, which when he shall haue seene, and read, passing over the titles thereof, from the first, to the 17, *de veteri iure enucleando*, let him take with the rest that title into his consideration: And with these authorities, I leaue him to discerne, whether the *Ciuill* law now is, or then was, when this aspersion was cast vpon it, which was in the yeare 1615. (as it was 1000 yeares & odde before that yeare) a *Sea full* of waues.

To meet with that obiection that may be drawne from the time, wherein we say the *Ciuill* law was digested from so many books, to so few, from that confusion to that order, the *Emperour* brought it vnto 1000 yeares,

wherein it might grow to confusion againe, the same it was before. I call to witnes all the manuscripes & Impressions (since) of the Ciuill law, whether the *Tomes* thereof be more now, then the 4. *Tomes* they were then; these, the *Digest*, or *Pandects*, the Code, the *Authenticks*, and the *Feuds*, whereunto the *Emperour* had brought them from 2000 bookes, or upon the point, as before is said: And as all writers doe agree, they were *penè duo millia librorum*, wherein they write there were contayned 300000 *Paragraphs*. Here I leave the first aspersion, and turne to the second.

Digest or Pandects.
Code.
Authentiks
Feuds.

2. *That euery Doctors opinion (in that learning) is a good authority.*

upradict. prætat ecd. fol. and pag.

FOr the second aspersion, the same Author comes vnto that, from his reason for his first, this; *The Text* whereof (meaning the *Ciuill* law) being digested into so many *volumes*. Now he goes on with, And so many Doctors interpreting the texts, and twice as many more commenting vpon their interpretations, and so glosse vpon glosse, & booke v-

pon

pon booke, (& ſo he is come vnto that aſperſion) this, viz. *And euery Doctors opinion being a good authority, fit to be cited and vouched among them (meaning the Ciuilians) muſt needes breed diſtraction of opinions, and vncertainty in that law.* *Imput.*

Here he comes in with ſo many, & ſo many, & twice ſo many *Texts, Doctors, Coments, Gloſſes, Bookes, Opinions,* & I cannot tell what, one vpon another: But were they more by twice ſo many as they are, that write vpon that law, their Gloſſes, Comments, Opinions, & what elſe, could no more hurt or confound it, then the frogges or Graſhoppers can the groundes, when they hop, skip and leape, one ouer another: For we reade the Doctors, and reverence them. But we honour, and hold the law, wherein our reading aſſures vs, and we may belieue it, and we doe belieue it, *nihil eſſe perplexum, nihil ambiguum, nihil diminutum, nihil quod contrarium, aut ſimile videri poſſit, nullam eſſe geminam legem in toto iure ciuili.* But to the point, where the Author ſayeth, that euery Doctors opinion is a good authority for us: The words of this aſperſion, we ſay the contrary: Neuer a Doctors opinion, ſaving *Refut.*

the

the common opinion of the Doctours, is authority for vs to giue or take in Iudgment in our Courts, Nay the common opinion of the Doctors we receiue very ſparingly, and many times we receiue it not. For our *Axiom* which they call their *Maxime* for our pleadings is, firſt *intentionem ſuam per probationes in Iudicium deductas oſtendere*: Next *Iuribus aſſeverare*, not *Doctoribus*. For Doctors opinions goe no further then to *Bartoll* & *Bald*. Nay then to *Bartoll*: is there a Doctour more famous, more worthie, or of more authority then *Bartoll*: *Bartolum verò quotuſquiſque non appellat lucernam juris, & dominum, & aurigam Doctorum*: vvhoſe opinion, for an opinion, the vvhole World embraceth, vvith this applauſe, viz. *Bartoliſta, optimus Iuriſta cenſendus eſt*: yet for a Iudgment or finall decree, it leades our Courts no more, then the reſt of the Doctors their opinions doe. From vvhoſe authorities though vve may gather many memorable matters in point of learning in lavv. *In diſputando tamen* (ſaieth the *Ciuilian*) *non ſunt alleganda, ſicut nec eorum auctoritates opponenda diſquiſitioni veritatis. Nec peraquè valent in foro, atque de legum fontibus deducta*. In a vvord (judicious Reader)

that

that *Doctors* opinions or *Glosses* the two strings the Author harpes so much vpon to fasten this aspersion vpō our learning, as that they should be given or taken (as he writes they are) therein for fit authorities to be vouched by vs, to beget that distraction and vncertainetie in it, which he casts vpon it, in this particular, believe not me, but our Doctors, and the *Glosses* themselues from whom I speake; they holde nothing more injuist, nothing so inept, & fooliſh; whereof to giue to the Reader but some little touch. I vouch and cite onely but one of our Doctors, but one of our Glosses amongst the rest, sayeth that Doctor, though ancient & famous, yet not so ancient, as famous in that learning, by way of advertisement against it: *Quicunque cupit juri operam dare, sit circumspectus infrascriptis* I passe ouer nine notable documents of this Doctors, to come to his tenth & last, to this purpose, wherein thus he speaks to the *Ciuilian*: *Consulo* (sayth he) *quod solis textuum allegationibus inhæreat: Non vt quidam inepti, aut inexperti faciunt, qui arguendo, glossas allegant, & Doctores, absque jurium allegatione: illo enim, nihil apud Doctores ineptius:* I counsell the *Ciuilian* (sayeth this Doctor) that he sticke

so, in his pleading, solie, the law-texts, or text-lawes, & not as some fooliſh & vnskilfull do, who, in their pleadings, alleage the *Gloſſes* and *Doctors*, & leaue the lawes; then the which (he ſayth) nothing is holden more inept amongſt the Doctours. *Iohn Baptiſt de Gazalupis, Documento decimo.* Now if the Reader will haue a Gloſſe, an exclayming gloſſe againſt ſuch pleaders: the gloſſe vpon the law, *ſed licet*, in the title *de officio Præſidis* in the *Digeſt*, is the gloſs: This *Doctor* & this gloſſe alone, without the reſt that hath beene ſaid to this *aſperſion* might ſhew the Iudicious Reader, but theſe and the reſt together with them may confirme him in the *wrong*, in this *aſperſion*, to that *learning*, to thoſe *Courts*, to that *practice*, and to thoſe Profeſſors in the *Ciuill law*, from whence I deſcend, as the Author leades me, to the *Canon law*.

In Bapt. de Gazalup. doc. 10.

3. *That the like may be ſaide of the Canon law, albeit the text thereof be ſcarce* 400 *yeares old.*

For this aſperſion at the *Canon* law, becauſe it is the aſperſion the ſame Author caſt at the *Ciuill* law before, or rather at

Suprad. præſat. fol. cod. eand pag

vs who profeſſe it, as that, touching *euery Doctors opinion* &c. the which hath beene ſpoken to already: for this, I referre the Reader vnto that: For the Authors additiõ vnto this which hee ſpared in that, the age of the *Canon law*, which he ſtraines to make, ſcarce to bee 400 yeares from the yeare 1615, the yeare wherein he wrote ſo. Let the *Nouell* be belieued, or (in the *Nouell* rather) the *Emperor* himſelfe *Iuſtinian* a 1000 yeares before that yeare 1615, or as neare a 1000 as 965, the *Canon law* was, & in vſe and practice in the Church: Nay more in difference & debate then betweene the Biſhops & the ſecular Iudges of that age, touching ſome cognizances in ſome cauſes, whence this *Nouell* (frõ this Emperor) proceeded: As that act of *circumſpectè agatis* did vpon ſuch a difference betweene the Biſhops & the Iudges of the Land, from *King Edward* 1, which Act, vvith vvhich *Nouell* agreeing in ſubſtance of matter, either ariſing from the ſame ground, & pointing at the ſame end, becauſe they be but ſhort, I recite them both, the Reader may obſerue them, ſaid the *Emperor*, (firſt) in his *Nouell: ſi delictum ſit Eccleſiaſticum, egens caſtigatione vel multa Eccleſiaſtica, Deo amabiles Epi-*

Imput.

Reſut.

In § penult. in nouel. vi Cler. apud prop. epiſ con.

ſcopi hæ diſcernant, nihil communicantibus clariſsimis propinquis judicibus, neque enim volumus talia negotia ſcire omninò ciuiles judices, cum oporteat talia Eccleſiaſticè examinari, & emendari ſecundùm ſacras & divinas regulas, quas etiam ſequi, noſtræ non dedignantur leges.

Anno 13. Ed. 1 Circumſpecte agatis.

Thus farre the *Nouell*: the Act enſueth, viz. The *King* to his Iudges ſendeth greeting. vſe your ſelfe circumſpectly in all matters concerning the Biſhop of *Norwich* & his Clergie, not puniſhing them if they ſhould plead in court *Chriſtian* of ſuch things as be ſpirituall, that is to vvit, of pennance injoined for deadly ſin, as fornication, advovvtrie, & ſuch like, for the vvhich many times, corporall pennance or pecuniarie is enjoyned ſpecially, if a freeman be convict of ſuch things. Alſo if Prelates doe puniſh for leaving of Church yeards vncloſed, or for that the Church is vncovered, or nor conveniently decked, in vvhich caſes none other pennance can be enjoyned but pecuniary. *Item* if a Parſon demaund of his Pariſhioners, oblations & tithes due & accuſtomed: Or if any Parſon plead againſt another for tithes more or leſſe, ſo that the fourth part of the value of the benefit be not demaunded. *Item* if a Parſon

demaund

demand Mortuaries in places where a Mortuarie hath used to be given. *Item* if a Prelate of a Church or the Patron demaund of the Parson a pension due to themselues, all such demaunds are to be made in the Spiritual court: And for laying violent hands on a Priest: And in cause of defamation, it hath beene graunted already, that it shalbe tried in the Spirituall Court, when money is not demaunded, but the suite is prosecuted for the punishment of sinne, & likewise for breaking an oath. In all the cases afore reheatsed, the Spirituall Iudge shall haue power to take knowledge, notwithstanding the Kings prohibition, Anno 13. E.1. Our Author it seemes (judicious Reader) went no further for the age of that law, then to *Clement* 5. Bishop of Rome, who might tell him (& truly) the *Clementines*, that volume of our *Decretals*, were made & published by him in the *Counsell* at *Vienna*, but in the yeare 1308. Or if he went to *Boniface* 8. he might tell him (& as truly) he methaded the Sext, that volume of our *Decretals*, in or about the yeare 1298. Or *Gregory* 9, might tell him, if he went to him, the volume which *Raimundus Barcinonensis* his Chaplen, at his cõmandement had

gathered, the first volume of our *Decretals*, was published by him to be read in Schooles, & practized in Courts much about the yeare 1231. Or *Gratian* the Monk, Pope *Eugenius* his confessor, who after *Iuo* Bishop of *Carnat*, had gathered the *decrees*, the auncientest of our volumes in the *Canon law*, might tell him (& truly) he polished & perfected the same, and that it was allowed by *Eugenius*, and published by him in the yeare 1149. or thereabouts, but what of th-se relations never so true, he that will be truly informed of the Antiquity of the *Canon law*, must not looke at the volumes thereof *Decrees* or *Decretals*, but at the *Decrees* or *Decretals* themselues in the volumes, for they were before their volumes were, how could they else haue beene digested; Had the Author gone to *Constantine*, the great, the first Christian *Emperor* who (first) gaue leave to the christian Church to meet in councells, to make *Canons*, to governe in the Church, Or to the Commons of the first 4 generall *counsells*, he would never haue straighted the *canon* law from the yeare 1615. to 400 yeares; Hetherto this aspersion.

anones g:-
eralium
ncilior
nt Isidorus
it lib. 5. E-
mol. c. 10)
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ist. 15.
p. 1.

4. *That for the ſpace of 300 yeares after Chriſt the diſtinction of Eccleſieſticall and Spirituall cauſes in point of Iuriſdiction, was not knowne nor heard of in the Chriſtian world.*

TO come to this diſtinction of *Eccleſiaſticall* and *ſpirituall cauſes*, from Ciuill & Temporall, in point of *Iuriſdiction*, as when it ſhould begin, and his reaſons why it was not knowne nor heard of in the Chriſtian world before, Let the Reader *obſerue* how the Author writes; firſt (then) ſayeth he, let vs ſee, when this diſtinction of *Eccleſiaſticall* or *Spirituall* cauſes, from Ciuill and Temporall cauſes, did firſt begin in point of *Iuriſdiction*: Aſſuredly for the ſpace of 300 yeares after Chriſt, this Diſtinction was not knowne, nor heard of in the Chriſtian world: For the cauſes of Teſtaments of *Matrimony*, of *Baſtardie*, of *Adultery*, & the reſt, which are called *Eccleſiaſticall*, or *Spirituall* cauſes, were meerely ciuill, & ſubject (only) to the *Iuriſdiction* of the ciuil Magiſtrate, as all *Ciuilians* will teſtify with me:

In the ſaid printed report in the caſe of præmunire. fol. 95. pag. 2.

me: But after that the *Emperor* had received the Christian faith, out of zeale, & desire they had to grace, and honour the learned and godlie Bishops of that tyme, they were pleased to single out certaine speciall causes, wherin they graunted Iurisdiction vnto the Bishops. namely in causes of tithes, because they were payed to men of the Church: In causes of Matrimony, because mariages were, for the most part, solemnized in the Church, In causes *Testamentarie*, because Testaments were many tymes made in *extremis*, when Church-men were present, giving spirituall comfort vnto the *Testator*; and therfore they were thought to be the fittest persons to take the probats of such Testaments, How be it the Bishops did not proceede in these causes, according to the decrees and Canons of the Church. for the Canon law was not (then) hatched.

Imput.

Refut. For this Distinction the Authors reason for his *assurance*, that it was not knowne nor heard of in the *Christian* world, in point of *Iurisdiction*, for the space of 300 yeares, after *Christ*, is, (he sayeth) for the causes of *Testament*, *Matrimony*, *Bastardy*, *Adultrie* and the rest, which the *Emperor* (after he had received

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the Christia faith) had graunted to the Iurisdic-
tion of the Bishops were meerely Ciuil, & de-
termined by the rules of the Ciuil law, & sub-
ject (only) to the Iurisdiction of the Ciuil Ma-
gistrate: As though whē the Emperor had tran-
slated these causes & the rest frō the Iurisdicti-
on of the Empire, to the Iurisdictiō of the Church
He translated (not therwith) the lawes that
belonged to them, & their Cognition or Cogni-
zance: Or that the causes could become (when
they were translated to the Church) Ecclesiasti-
call or spirituall causes in the Church, and the
lawes that belonged to their cognizance or
cognition remayne ciuill, & Temporall lawes in
the Empire? what had the Emperor done (then)
when he had translated the causes, & not the
lawes? this; given the causes to the Church
without lawes; And left the lawes vnto the
Empire without causes, the causes (I meane)
whervnto these lawes belonged, & the lawes
to the causes. Now these Bishops (layeth this
Author) did not proceed in the causes afore-
said according to the Canons & Decrees of the
Church, because (he layeth) the Canon law was
not (then) hatched. A goose reason, was not
the Church (then) hatched? and were there not

Bishops (then) in the Church, the Author can-
fesseth the translation of the causes to the Bi-
shops: why then Cicero tells him in his offices
Libro. 1. *non patimur res apud eos, in quibus transi-*
fertur And so it holdes, *transferendi quæ; transfe-*
runtur et lex: as in holy writ, *translato sacerdotio*
Cap. transl. is de transit *necesse est, vt legis translatio fiat.* But howsoe-
ever Industrious Reader this distinction of *Eccle-*
siasticall & *Spirituall* causes, from *Civil* & *Te-*
porall, in point of *Iurisdiction*, that so much hath
troubled the Author, is as ancient in the
courtes of the Kingdome, as this of the Lordes
spirituall & *Temporall* is in the house of *Parlia-*
ments, which he might have challenged aswell
in the Persons, and in their actions, as in the
causes (which indeed) he hath done, for the dis-
tinction is the same in one, in all, *Persons, things*
& *actions*; touched in one, touched in all, Here
I leave him for that distinction, from whence
I am come to his next aspersion cast at the Bi-
shops and their Clergie.

That the Clergie, by their Iurisdiction which
they had from Cæsar, got Pride, which begot
Pride, which begot their Ingratitude to
Princes, which blotted Cæsars name out of
the

the ſtile of their Courts, and called them Courts *Chriſtian*.

THe diſtinctiō hath brought the Author to the *Iuriſdictiō* of the *Church*, As great an Ei: ſore to him, nay a greater the the *diſtinction*, (*the Church muſt haue no Iuriſdiction*) whervpon thus he writes; The Clergie (ſaith he) having gotten, by this *Iuriſdiction*, great wealth, their wealth begot pride, their pride begot Ingratitude towards *Princes*: who (firſt) gaue them their *Iuriſdiction*, & then, according to the nature of all vngratefull perſons, they went about to extinguiſhe the memory of the benifit: For vvher their *Iuriſdictiō* vvas firſt derived from *Cæſar*, in the execution, vvherof they vvere *cæſars Iudges*: So as both their *courts* and *cauſes* ought ſtill to haue borne *Cæſars* Image, & ſuperſcription, as belonging vnto *Cæſar*, they blotted *cæſars* name out of the ſtile of their courts, & called them Courts *Chriſtian*, As if the Courts holden by other Magiſtrates had beene (in compariſon) but Courts of *Ethnicks*: & the cauſes, vvhich in their nature vvere meerely *Ciuil*, they called *ſpirituall*, and *Eccleſiaſticall*: So as if the *Emperor* ſhould chal-

Iewel. In the ſaid printed report cod cap. fol 96. pag. 1.

lenge his Courts & cauſes againe, & ſay *Reddite Cæſari quæ ſunt Cæſaris*, they would all crie out on the contrary part, & ſay, *Date deo, quæ ſunt dei*, Our Courts beare the name & title of *Chriſt*, the ſuperſcription of *Cæſar* is quite worne out, and not to be found vpon them.

Refuted. A ſtrange *phantaſie, fiction, imagination*, that the ſtiling of the one Court, the Court *Chriſtian*, ſhould hammer into any head, ſuch a toye, to make the other (as it were as the Author ſayeth in compariſon) Courts of *Ethnicks*: ſo the Author would inſinuat, not to ſpeake of other kingdomes or (common wealthes) then wherevnto wee doe belong, come not they both from one fountaine, from one head? are they not ſet both, & doe they not ſit both *Siſter*-like, in one *crowne*? thanked be GOD, they doe ſo, hand in hand, *Chriſtian* Courts both, though not *ſtiled* (both) Courts *Chriſtiã*, *Sainct Hieromes* diſtinctiõ vpon the point, that ſetled his *Leuite*, might haue ſetled the Author aſwel if he had hit vpon it, as he could not eaſily miſſe it, turning our bookes as it ſeemes he did for the hatching of the *Canon law*. But as he writes who hath written truly of ſome ſorte of men, *Cancros prius recte ingredi facias, quam*

12. q. 1. Cap 7.

him

his qui non tam Iudicio, quam proposito, et voluntate aberrant, quibus suis rationibus satisfacere possis, quibus, Ne si persuadeas quidem, vnquam persuaseris; Touching that *distinction*, thus that Father writes vnto that *Leuite* whom he calles *Leuitã suũ; duo sunt genera christianorum; est autẽ vnum genus quod mancipatũ est diuino officio &c. vt sunt Clerici et deo deuoti; aliud vero genus est christianorum, ut sunt Laici, his temporalia &c.* The Sages of the Authors learning in the law of the land, that haue beene to this tyme, did never stumble at that stile, before, but passed (sagelie) by it: the beginning whereof in the Courts of the *church* was when she was not loaden with wealth, *Nec tunc diuitiæ ecclesiam onerabant*: Alas she was not loadẽ with persecutions, they were not *Cæsars* courts then, as the Author makes them, *Cæsar* had not (then) receiued the faith, But the Church held them even in the thickest of *Ethnicks* who called them the *christian* Courts, whence they came stiled the Courts *christian*: vnder which stile they came vnto *Cæsar*, whẽ *Cæsar* came to the *christian* faith, And from Cæsar to the *church*, with sundry sacred *constitutions*, as of the holy *Trinity* & *Catholique faith*: of *churchi*: of *Bishops*

C desum. trin. et fid. Cath. cod. de Episc. Cler. &c, cod. de Episcop. aud. &c. cod. de Hær. et man. et fam. cod de Apostat cod de Iud. et celicol. cod de pagan. &c.

of

of the Bishops audience, or *Iurisdiction*: with sundrie more, in mayntenance of the faith; as against *Heretichs, Maniches, Samaritãs, Apostats, Iewes, Gelicols, Pagans*, & the like, all in assistance of the *christiã* faith, whervnto he added afterwardes, as the Author sayes, other Cognizances or Cognitions of causes, as of mariages, Testaments, and the like.

cod. de nupt.
cod. de testã.

Now, vveigh (Iudicious Reader) vvo things one, vvhat the vvealth could be, that our Author dreames of, the Clergy could haue gotten then, vvhen (he vvrites) they got it by their Iurisdiction vvhich they had from *Cæsar*, to beget their pride, to beget their ingratitude to Princes, to blot out *Cæsars* name out of the stile of their Courts? *Another*, hovv they could haue blotted *Cæsars* name out of the stile of their Courts, by stiling them, (if they had so stiled them) *Courts christian*? vvhen *Cæsar* had imbraced *christ*, vvas he lesse *Cæsar*, then he vvas before, vvith this Quere, I leave this a sperſõ vvith this intimatiõ, that our Author vvho envies (it seemes) herein that the Courts of the *Church* should be stiled Courts *Christian*, arrogates to *Cæsar* more then *Cæsar* to himselfe & more then *Cæsar* vvould he should doe, &

derogates

derogates from *Christ*, frō whom the stile proceedes indeed (& rightly) how soever (so) stiled vnder God, & whom, *Cæsar*, & the Bishops vnder him, hold thē, & whose *Tribunals* they are, & not *Cæsars*, nor the Bishops, more then in their execution.

6. *That Bishops Chancellors (are of late) but vpstarts in the world.*

WHether the Author of the former aspersions cast at Ciuilians, the *Ciuil & Canon lawes*, and at the *Clergie*, be the Author of this *aspersion* and the next & last I finde of this kinde, throwen at Bishops Chancellors, or some other vpstart Author that hath gleaned after him or that went before him in the same field, I cānot tell I find thē (by relatiō) to be printed, as the rest but not printed with the rest, but howsoeuer let thē goe together, and their Author be whō he wilbe, thus he writes: Bishops *Chancellors* are but vpstarts in the world. Bishops *Chancellors* (Iudicious Reader) whom we call their *vicars generall*, (other *Chancellors* know we

D. Ridley in his view of the Ciuill & ecclesiasticall law pag. 104.

Impud.

none

none to Bishops) saving this vpstart opinion,
Refut. ate vpstarts of no lesse then 1290. yeares standing in the world, so long haue Bishops had their *Episcopall audience* which made them *ordinaries*, and so long haue B^s^: had their *vicars generalls* whom we call their *Chancellors*; For which audience & their becõming *ordinaries* herevpon, & the *Emperors* reasons therefore: Let the reader vnderstand that when the Bishops constãcie in Religiõ sealed with so many of their blouds, and their Clergies, had brought the *Emperors* thereevnto, wherein Cõstantine began: the succeding *Emperors* thought not enough their *superiority* in the *church*, without powet & *Iurisdiction* to strengthen them therein: For said the *Emperor* in his *Christian* zeale therevnto,

Et si præcipuũ pontificis seu Episcopi munus est doctrina verbi, populum moderari, tamen, quia non omnes, dicto audientes sunt, nec ejusmodi persuasione, ad disciplinã perduci, vel in officio retinere possunt et superioritas in qua sunt ecclesiastici, absque Imperio et Iurisdictione, non satis habet nervorum et authoritatis, denique quoniã ecclesia mater et cultrix est Iustitiæ. Ideo Episcopis peculiaris quædam Iurisdictio ecclesiastica Ciuili dignior in personas

et

et causas ecclesiasticas, legibus Imper: ei attributa &c. vt ius dicant Clericis &c.

And least the *Emperor* in his constitution in these worder *vt ius dicant Clericis &c.* should seeme to the Reader to straight the Bishops, in their *audience*, or *consistories*, to Clerks onely, there followes a *præterea* in the same title, in the *Code de Episcop: audient:* not long after: this *præterea* (layeth the *Emperor* there) *ius dicunt Laicis &c* But to the point, became the Bishops *ordinaries* (then) by this *Iurisdiction?* and the same *ordinaries* in the lawe, that (now) they are? & if they did, did this beget their *vicars generalls* (then) whō (now) we call the Bishops *Chancellors* necessarily, They did so, become (by this) *ordinaries* then, & the same *ordinaries* in the lawe, then (that now) they are. And from whence proceeded their *vicars generalls*, and the same we call the Bishops *Chancellors* now whom the Author calls *supplants* in the world the lawes or constitutions in the same title of the Bishops *audience* in the *Code* doe teach the same fro point to point. For not to speake out of them, but to goe on with them as they lie *concatenate*, in the title layeth another *Ac cū sint ordinarij iudices*, meaning the Bishops, layeth

cite a third, *similes præfectis prætorio*, A fourth, *ordinarie quoque procedant*; These linked texts in that title in the Code, as they stand cited, doe answere to the points in the question, before propoled, punctually, having to the point of the Bishops *vicars generalls*, wherevnto, though they answere fully, yet because not plainely to the Reader, no Ciuilian, let him be pleased but to cast his eye, a few lynes backe againe to the words *similes præfectis prætorio*, where the *Emperor* paralells the Bishops having made them *ordinaries*, with *Magistrates* called *præfecti prætorio*, of who there were but three in the wide world, one in *Asia*, *Præfectus prætorio orientis*, Anocher in *Europe*, *Præfectus prætorio Illirici*, The third in *Africa*, *Præfectus prætorio legionibus & militia Africanæ*. These Ciuill Magistrates were (respectively) Iudges of the causes which the *Emperor* had translated fro the *Empire* to the *Church*, whereof mentio is made in this *Epitome* before, of the which whe the *Emperor* had made the Bp. the same Iudges in the Church, the *Præfecti Prætorio* were in the *Empire* before, & had made them *similes præfectis prætorio*. who were *Illustres Iudices*, & so stiled in the law, with this addition of their *vicars*.

pag. 12. l. 16.

generalls.

generalls. Howv could the Bishops be (vvithout their *vicars generalls*) *similes prefectis pretorio*? that they had *Iurisdictiõ*, as the *prefecti* had, that they were *ordinaries*, as the *prefecti* vvere, and *Illustres Iudices*, made them not, (as the Emperor made them) like vnto them, vvithout their *vicars generals*. Novv, if the Reader vvill haue the reason vvhy the *Prefecti* had their *vicars* (all one binding in the Bishops,) it is this *Quia illustres erant: & ante stabant cæteris dignitatibus, Ideo habebant vicarios suos in Ciuilibus causis audiendis, et terminandis*. So vvere the Bishops then, & so are they novv, *Illustres Iudices & antestabant & anteštant cęteris dignitatibus in ecclesia*: Novv, if the *Prefecti pretorio*, because they vvere *Illustres Iudices & anteštabant ceteris dignitatibus* in the Empire, had their *vicars*, as they had, vvhy the Bishops vvhõ the lavv paralells vvith thẽ in the Church, should not be as like vnto thẽ in their *vicars generalls* in the Church, as in the rest of the partes of their honour vvherevvith the Emperor had honoured them, & the lavv honours them at this day, let the Author (if he can) shevve the difference. Iustinians Code hath sundrie lavves, some, of his ovvne, some of the Emperors before him, even

from the dayes of *Constantine* the great, that shewve that Bishops in their *Episcopall audience* sate not vvithout their *Chācellors*. Their *Chancellors* ofte vvithout the Bishops vvhose higher charge in CHRIST *Church* endured not the Bishops presence in court causes, ordinarily. And though (likely) not vnder the name & title of *Chancellors*, nor alvvayes *vicars generalls officialls*, nor *Commissaries* they had other titles, but the same offices, as *Ecclesiedici*, or *Episcoporum Eedici*, as much to say as Church Lavvyers, or Bishops lavvyers professed Ciuilians, & Canonists, of that age, the very selfe-same officers & offices that the Bishops *vicars generalls* then were, & now are, who, & the Bishops then made, & doe now make but one, & the same *Tribunall*, or *Consistorie*, no sooner *vicars generalls* but *ordinaries*, their Cōmissions they hold from the Bishops: But their *Iurisdiction* from the law; These be the *vpstart* officers in the world our vpstart Author would make. I am come to his next *aspersion*, the last I finde of this kinde, as the roote of these officers, the Bishops vicars *generalls*, whom we call their *Chancellors*, from whence (he writes) they did proceed from the sloath of Bishops.

7. That

7. *That the ſloath of Biſhops hath brought in Chancellors.*

Impus

A Proper Parent *(Sloath)* to breed vpon: could his learning vvhich commends him, finde no other, or (if none but that) no other ſtocke, to beare it then the Biſhops, The Biſhops and their Chancellors both, are much beholding to him: But let the Iudicious indifferent Reader, but cõſider hovv the brother of this *aſperſion* can faſten it vpon the Biſhops, or their Chancellors, Hovv could the Biſhops *ſloath* bring in their Chancellors, certaynelie, the Biſhops *Naſcentis eccleſiæ*, the auncient Fathers of the Church were vnder perſecution, no ſooner ſet in their *Seas*, but beſet with *Ethnicks*: alas, they had no reſt to beget ſloath, to beget their Chancellors: And for the Biſhops *Citerioris ſæculi*, the later Fathers, they brought them not in, they found them in their *conſiſtories*, vvhen they came themſelves; In a vvord, (*Iudicious* Reader) *Th'imperiall* povver, *th'immediat* povver, vnder *GOD*, & *Chriſt*. (as it is ſet dovvne in vvhat hath beene ſayed

related by *D. Ridley* in his view of the Ciuil & eccl: ſiaſticall law pag. 104.

Reſut.

to the aſperſion next before) brought them in, and not the ſloath of Biſhops, as the Author dreames. Novv the cauſe vvhy the *Th'imperiall* povver furniſhed the Biſhops: vvith theſe officers vvas (indeed) the multitude & varietie of *Eccleſiaſticall* cauſes, then (more novv) by as many more, the *deciſions* vvhereof in their Cõſiſtories, left to the Biſhops: the *Emperor* doubted might haue dravven them from prayer, & divine exerciſes. A ſecond reaſõ vvas, that the cauſes of the Cognizãce of their Courts, vvere more likely (as they are) to haue, thereby a more ſpeedy, ready, and ludicious triall before Iudges of the ſame learning, vvhich requires a vvhole man, then before Iudges of another, though a higher, requiring (as the Biſhops paſtorall office doth) a vvhole man too. If the Author vvill haue a third reaſon, it vvas that Clerks, ſuites and quarells, ſhould not be divulged & ſpread abroad amongſt the ſecular ſort, vvhich trenched many times vpon the vvhole profeſſion, eſpecially in Capitall matters vvherein *Princes* (anciently) ſo much tendered the clergie, that if a Clerke had cõmitted an offence vvorthy of death, or open ſhame, vvhereby he became (*perpetually*) infamous, he vvas not firſt executed or put to open ſhame,

before he was degraded by the Bishop, & his Clergie, & so was executed & put to shame, not as a Clerke, but as a laye *Malefactor*; for the honour & dignity of Priesthood. It were to be wished this order were retayned still, that *Clerks* should not passe (immediatly) whe they fall into such *Excesses*) frō the *Alter* to the halter, but hang, or suffer other shame without their Priest hood: which order if it were retayned still or might be restored, would much honour the Church, and no whit derogat from the *Iurisdiction* of the *Crowne*; For the second of the foresaid reasons, as where the Bishops in their Cōsistories haue not had their *vicars generalls*, whō we call their *chancellors*, as in many partes in this kingdome wherin we live, they have not how many just causes vpon grievances in proceeding before the Bishops: giv̄e haue beene appealed & quareled, & the plaintifes in the first instances before the Bishops: the *Iudge a quo*, in the cause of appeale or quarell overthrowen before the *Iudge* of the Appeales or quarell, the *Iudge ad quem*, to the insupportable travell and expence of the subiect, their transmissions in the causes in the Registries of the Courts of Appeales, &

quarells

quarrells, doe shewe; which doe cut so sore vpon the poore, many tymes, that (spent) by that occasion, in the second instance, he is not able to prosecute in the principall, the first, and so looseth all, *operam & oleum*: To meet with this mischeife, or *Inconuenience* rather, the law hath provided in great wisdome, that if a Bishop will hold himselfe so compleat a *Iudge* within himselfe, as that he needes no Chancellor, but will proceed without him ordinarily, his *Metropolita* the Arch-Bishop, of whose province he is may compell him thereynto, or if he will not be compelled, may put vpō him a Chancellor, as the *King* the supreame *ordinary* may vpon the *Metropolitan*, in the case, and supplie his neglect in the Suffragan Bishop. If the Metropolitan supplies it not. For as, each superior *ordinary* over the immediat vnder him, hath his *supplitorie* power by the law, so hath the *King the supreame ordinarie* over them all, *subordinates* vnder him, his supplitorie power by the same rule. so necessarily holdes the law those officers (whom it may not be omitted) his late Maiestie in his late instructions for the ordering & setling the Courts and course of Iustice, within this kingdome, hath confirmed,

Published by cōmandement of the Lords Iusticeș and counsell: 1623: viz: In his late Maiesties instructions:

confirmed, viz. in his 45 instruction or direction thus; That the Bishop of every dioces take order to appoint honest & sufficient Officials, Chancellors & Commissaries to execute Iurisdictiõ vnder them. Iudicious Reader I haue said, though not so much, by much, as might be said, to this, & the rest of the scandalous positiõs, I haue passed over, yet more then I needed to deale with their Authors, out of their *Elemõts*, in this kind. *Apelles* sent the Shoomaker to his last, when he gaue his Iudgemẽt, though but of the foote of the picture he had drawen, though a part of the body whose picture it was, that belonged to his trade; Our Authors haue gone as high aboue the foote, as the height of the head; the Bishops of the Church: The lawes of the Church: The Courts of the Church; & the Iudges of the Church, vnder the Fathers, their Chancellors, whõ we call their *vicars generalls*; with whom they haue dealt, as Painters vse to doe, with the Image of GOD whom no man ever saw, nor that Ma^tie. seene with mortall eyes; yet they can imagine an Image of him, as our Authors haue done of the Bishops Courts, lawes, and the rest: whom, & which, though they haue seen, yet not in Iudg-

vndè illud vulgare adagium Ne sutor vltra Crepidam; & illud, Ne cæcus de coloribus, &c.

merit, not professing their learning, of whom, & which they haue (more then boldly) written, though of learning & Iudgment, yet without learning or Iudgment. Let not any Reader therefore of their *Theses* or *positions* in the premisses, if he stood, or stands, or shalbe affected to the studie of that learning, in those lawes, be discouraged thereby: what the *Ciuil* & *Canon* lawes are; and what the causes are, of the *Cognizance* or *Cognition* of either of them in the kings dominions, in the Church or Common wealth, the Reader might expect in the body of this *Epitome*; but omitted there, th'appendix thereunto ensewing opens them, whereunto, the Reader is referred.

AN APPENDIX.

Wherein, the Ciuill and Canon law, with the causes of the Cognisance or *Cognition of eyther of them in the Church,* or Common-wealth, in the Kings Dominions, (what they are) are opened.

What the Ciuil law is?

THe law of the Ancient Romans it is, the same we call the *Roman* Ciuil law, that was reduced by *Iustinian*, frō 2000. bookes, or very neare 2000 bookes, to the 4 *Tomes* or *Volumes* mencioned before in this *Epitome* pag. 4. whereof the *Digest* or *Pandext* is the first, so called, *Quia digerit omnes disputationes legum, & in se, quasi in sua aluo, continet.*

c de vet: iur enuc. l. 1. § omnia.

The second, the *Code*, of *Candex*, as much to say as *plurium tabularum contextus: vnde tabulæ codices dicuntur*: cōpiled (as a learned Doctour of ours related) of 56 answears of so many *Emperors*, with their counsell famous learned men, to as many *cōsulations*: wherof, that *Tome* compiled, is called the *Code*.

D. Ridley in his view of the Ciuil, & Eccl. law pag. 178

The *Authenticks*, the third *Tome* or *Volume* of the Ciuil law, are a *Tome* or *Volume*, of new

Of this Tome at large D. Rid. view &c. pag. 45

cõstitutions of *Emperors*, after the *code*, brought into the body of the law, called the *Authẽticks*, as *authẽticall* of themselves proceeding (as they did) from the *Emperors* owne mouthes.

The *Volume* is devided into 9 *collations*, or *constitutions* or *Sections*: and they into 168. *Nouells* and the *Nouells* into Chapters: they were called *Nouells* because they were new lawes, whereof, some were generall, concerning all, all alike, *Persons* and *Places*; some speciall or private, vnto some speciall or private persons, and places:

of these 9 collations in their petticulars in D. Rid, view &c. from the last section pag. 45. to the last Tome of the Ciuil law pag. 61.

The three *Volumes* aboue mentioned were the *Tomes* or *Volumes* of *Iustinian* the *Emperor*, gathered by him, some, frõ some *Emperors* his predecessors, decrees and constitutions, some from his owne, as time & occasion had bred them, the latest no later then 500 yeares after CHRIST.

The fourth and last *Tome* of the Ciuil law are the *Feuds* of *Feudum*, of *Fœdus*, or *fides*, or (as some say) of *Fidius*, whom they faine the *God qui fidei præest*, by whom they vsed to sweare *per deum Fidiũ credis? iurato mihi. Plaut.* And not vnlike: For howsoever *Iustinian* the *Emperor* takes notice of them in his *Nouells*, he

Feuds explained by D. Rid in this view &c. to be Customes & seruices that the subiect or vassall oweth to his Prince or Lord for such lands or fees, as he holdeth of them pag. 61.

tooke

tooke it frō the ancient *Romans* before *Christ*, at the leaſt from *Alexander Seuerus* an *Ethnick Emperor* 224 yeares after *Christ*, very neare 400 yeares before *Iuſtinians* time, who made *Feudataries*, of whō, (likely) he tooke the oath of faith, and *Homage* (and they yeelded it) *per dextrum Fidium* &c *iurabis* &c. But frō whence, or whomſoeuer they proceeded, they became and are a particular *Tome* or *Volume* of the *Ciuil law*, which is, as that learned Doctour in his view &c ſaith pag. 3. for the great wiſdome and equity of it, at this day, as it were the Common law of all well governed common wealths, a very few excepted: whereof, all-be it ſundrie of them by the light of nature haue many rules of the *Ciuil law*, yet if all the lawes, of all other Countries were put together (none excepted ſaving the lawes of the *Hebrews* which came immediatly) from *God*, for wiſdome, grauitie, law, or equity, they come not neare to the law of the Romans, whence it is, that all other nations, (ſaving our owne) although they receiue not the *Ciuil* law (wholly) for their law, yet they honour and admire ſo much the equity thereof, that they interpret their owne lawes thereby. For the *Canon* law, it followeth.

Peckius de Regiur. Reg. ſuæ, a iure cō-muni 28.

What the Canon law is.

THat it is, which is concluded in the *Volumes* thereof mentioned in the 10 page of the *Epitome*, the *Decrees*, *Decretalls*, *Sext*, *clementines*, & *Extrauagants*. But let the Reader be aduertised by the way, that, not all that is concluded in those Volums, nor in the *Tomes* of the *ciuil* law before, but only the lawes, *constitutions* & *extrauagants*, such as are not crossing to the law of *God*, nor aduerse to the 4 first generall *councells* that at *Nice*; That at *Constantinople*; That at *Ephesus*, & that at *Calcedon*. Nor contrary nor repugnant to the *Royall Prerogatiue* of the *King*. Nor yet to the lawes Statuts & Customes of his *Kingdomes*, are the lawes we hold and follow, for the *ciuil* and *Canon* lawes in the *Kings Dominions*, whereinto they were induced out of their *volumes*, not the volumes themselues; where, though we reade them, because they be not volumed by themselues, but lye (dispersed) here, and there, amongst the rest therein: wee hold not the rest, amongst them, as wee hold them

An. 25 H 8: Cap: 19: in an Act for England intit. An Act of the submission of the Clergie, And An 28 H 8 cap 13: in an Act intit: an Act against the authority of the Bish: of Rome an act for Ireland.

them, for the *Kings Ecclesiasticall* lawes, no more then we hold the *Apocripha* in the Bible, (though, in the Bible) for *Canonicall* scripture; with this intimation, I descend to the causes of the *Cognizance* or *Cognition* of these lawes in the *Church*, or Common-wealth, in the *Kings Dominions*, what they are.

sic & Scripturas approbatæ et pa ifs miter apocraphæ ponuntur in decreto: 15, 16 et 20. dist.

A Schedule of

Such causes or actions of the Church, by the Ciuil and Canon lawes, as doe arise betweene party, and party, ordinarily. (As they call them) causes of instance, or At instance, viz.

1. *Church services with-holden from their Chappells.*
2. *Ecclesiasticall promotions, dignities or benifices.*
3. *Spirituall pensions.*
4. *Tithes.*
5. *Sedile causes, or seates in Churches.*

} Debates in

6. *Dilapidations.*
7. *Procurations.*
8. *Testaments.*

9 Lezacies

9 Legacies.
10 riages.
11 Divorces.
12 Diffamations.

With their and every of their Incidents, and Emergents.

A Schedule of such causes or actions of the Church, as, by the Civil and Canon lawes, doe arise by Accusation, Inquisition or Denuntiation.

1 *Offences against the act of 20 Elizabeth. Cap. 20 for the Uniformity of Common Prayer &c.*
2 *Pollutions of Churches, and church-yards.*
3 *Fighting or quarrelling in Churches, or church-yardes.*

§ Such are against

4 *Herisies.*
5 *Schismes.*
6 *Apostasie,*
7 *Idolatrie,*
8 *Violation of the Sabbath.*
9 *Violation of the Interdicts of the Church.*
10 *Excesses in Prelats.*
11 *Excesses in Clarks.*

12 Sacrilege.
13 Sortilege, witchcraft, inchantment.
14 Laying violent hands vpon a Clerk.
15 A Clerk a striker
16 Blasphemye.
17 Periury ecclesiast;
18 Simonye.
19 Vsurie.
20 Execrations.
21 Imprecations,
22 Incest,
23 Adultery,
24 Fornication,
25 Lenocinie,
26 Obscenitie, or Ribaldrie.
27 Drunkennes.

Such cure ag. Imprecates debilitates, Naufragia. Morbos &c.

Non frustra sunt instituta Regis Potestas, & Cognitoris ius; vngulæ carnificis; arma militis; disciplina dominantis, seueritas etiam boni patris.

Habent omnia ista modos, causas, rationes vtilitates, Hæc; cum timentur, & malicoërcentur, & boni, quieti, inter malos viuunt.

Cap. frustra. 23. 4. 5.

SVndrie other matters and causes there are, some *ordinarie*, some *extraordinarie*, some, *Ciuil* some, *Criminall*, of the *Conusance* of the *Ciuill* law, within the dominions of the *King*, which not of the cognizance, of the Church (whervnto this *Appendix* streights me) I set them not in the *Schedules* thereof: And yet for the honour of that learning, & more satisfaction of the Reader, I will point thereat herein, & no more, least it should exceede cõpasse (I meane) the compasse of an *Appendix* to so small an *Epitome*, of which learning let the Reader vnderstand that (first) the Lord Admirall of the Sea: Next the two *Vniuersities*, *Cambridge*, and *Oxford*, haue a larger exercise therein, then the *Church*, or other places in the *Common-wealth* haue, to season (thereby) the professors of that learning there, with that practice thereof, to make them the apter for such services therein, as the *Prince* & his *Cõmon wealth* at home, with *Princes* and their Common wealthes abroad, may require: Now, where the Nations round about vs, farre & neare, are ruled by the *Ciuil* law, wherein *Princes* treat with *Princes*, of peace, or warre, or other Cõmon wealth-affayres, by their *Ambassadours*, if

they treat. (How meanely soeuer [illegible] of the *Theses* or *positions*, in the Epitome before, or their followers therein, hold the *Ciuilian* & his learning) how *Princes* and their *Common*-wealthes esteeme of them, their imployments in their services in that learning shew; But what doe I point at treaties betweene *Princes* no *ordinarie* obiect of the *Ciuil* law: neyther deales it *ordinarily*, but incidently, therein by Commission from the *Prince*. So it doth in *Martiall* affaires in an *Armie*; So it doth in *Ensignes* and *Armes*: And so it doth in *decisions* of rights in *Precedencie* in *Place* & *Honour*, when such debates doe happen, as many times they doe, sometimes in the *Court*, sometime in the *Common* wealth, & [illegible] like kinde, which of the *Science* of the Ciuil law, though not of the practice of it, ordinarily, for the honour of that learning, I could not passe by them, and not point at them, nor leave vntoucht their honouring that *Science* whose authorityes (for Iudgment) all the world honours. *Latret igitur Criticus quisquis volet, modo nunquam latrare desinat*: (Sayeth one of these authorityes of that law) *Ea est*, (meaning the

 same)

